



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Tuesday, 18th May, 1948

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF PAKISTAN

Tuesday, the 18th May 1948

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, on Tuesday, the 18th May, 1948, at Five of the Clock, Mr. Chairman (Mr. Tamizuddin Khan) in the Chair.

AMENDMENT TO RULES OF PROCEDURE OF THE CONSTITUENT ASSEMBLY OF PAKISTAN—*contd.*

Mr. Chairman (Mr. Tamizuddin Khan): As the House will remember the other day several motions were moved and amendments were also moved. I may remind the Honourable Members that Sardar Abdur Rab Khan Nishtar moved his motion to amend sub-rule (5) of rule 6 of the Constituent Assembly Rules. Then to that several amendments were moved, one by Mr. Harendra Kumar Sur, another by Mr. Dharendra Nath Datta, one more by Mr. Dharendra Nath Datta, and still another by Mr. Harendra Kumar Sur. There are notices of several more amendments which are to be moved today.

The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) : Sir I move :

“ That for the motion moved by the Honourable Sardar Abdur Rab Khan Nishtar for amendment of sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted:—

That for sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted:—

(5) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.

(b) Any Member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.

(c) If such a Member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceases to be a Member of the Constituent Assembly and declare his seat vacant.

(d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of Law or before any other authority.”

Mr. Chairman : I think it would be better if you speak later on. Motion moved :

“ That for the motion moved by the Honourable Sardar Abdur Rab Khan Nishtar for amendment of sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted:—

That for sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted:—

(5) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan, unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.

(b) Any Member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.

[Mr, Chairman.]

(c) If such a Member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceased to be a Member of the Constituent Assembly and declare his seat vacant.

(d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of Law or before any other authority.' "

Mr. Dharendra Nath Datta (East Bengal : General) : Sir, a point of order has been raised by my friend, Mr. Bhupendra Kumar Datta.

Mr. Bhupendra Kumar Datta (East Bengal : General) : Sir, please refer to rule 31 of the Constituent Assembly Rules of Procedure, sub-rule (1). It lays down that 'an amendment must be relevant to the motion to which it is proposed'. In view of this rule, amendments (b), (c) and (d) of the Honourable Mr. Abdus Sattar Pirzada are out of order. I may also add that inasmuch as the Honourable Sardar Abdur Rab Khan Nishtar's amendment contains the words "or continue to remain a Member of," his amendment also is out of order. This amendment cannot come as amendment to sub-rule (5) of Rule 6. This sub-rule provides for the eligibility of a candidate yet to be elected, while this amendment provides for the removal of a Member already elected, that is, sub-rule (5) of rule 6 relates to future Members, but these amendments relate to present Members. Hence these amendments are not relevant to sub-rule (5) of rule 6 and are, therefore, out of order.

My next submission is that these amendments are repugnant to rule 65, which seeks to set up a conflicting authority—an authority in conflict with that contemplated by rule 65, *i.e.*, the Credentials Committee. That rule already provides for the contingency that these amendments seek to meet. In doing so, they create an authority that is to be rival to the authority already set up by this House. As such, these amendments, I contend, are out of order.

In the next place I submit that these amendments militate against rule 76. Rule 76 says—

"No election shall be called in question except by an election petition presented in accordance with the provisions of this chapter."

The Honourable Sardar Abdur Rab Khan Nishtar (West Punjab : Muslim) : Which rule please ?

Mr. Bhupendra Kumar Datta : Rule 76. The right of a sitting Member of this House cannot be called in question except under this rule, provided a Member has fulfilled the obligations imposed upon him by rules 3 and 5, *i.e.*, he has signed the roll, and has taken the oath of affirmation. Therefore so long as these rules 31, 65 and 76 stand in their present form these amendments cannot come up before this House, except amendment (a) of the Honourable Mr. Pirzada.

Mr. Chairman : Has the Honourable Member in charge to say anything ?

The Honourable Sardar Abdur Rab Khan Nishtar : Sir, I am really amused to listen to my learned friend, that the rule he has referred to stands in the way of my motion or the amendment moved by the Honourable Mr. Pirzada. In support of his contention he has referred to rule 31. Rule 31 says—

"An amendment must be relevant to the motion to which it is proposed."

This means that when a motion is moved before the House, it has nothing to do with the amendment to existing rules. When a motion is moved in the House, or if notice has come for a motion being moved in this house, then any Member can move an amendment, but the amendment must have something to do with the motion. It should not be altogether outside the scope of the subject-matter of the motion. Now it has first of all nothing to do with my motion. It has something to do with Mr. Pirzada's amendment. As a matter of fact I have actually moved a motion that for sub-rule (5) of rule 6, another sub-rule be substituted. So far as Mr. Pirzada's amendment to my motion is concerned it is perfectly within the scope of my motion. It relates to the very

subject-matter of my motion, *i.e.*, the sub-rule which I want to be substituted for the present rule 5. Therefore I would submit that the rule he has referred to, *viz.*, rule 31 has nothing to do with my motion. It has something to do with Mr. Pirzada's amendment to my motion. Mr. Pirzada's motion is closely connected and deals exactly with the subject, with a little alteration here and there of the motion I have moved before the House. So far as my motion is concerned he has not referred to any authority on the basis of which.....

Mr. Chairman : He has not objected to it.

Mr. Bhupendra Kumar Datta : So far as it contains these words, Sir,

“...or continue to be a Member of.”

the original sub-rule (5) of rule (6) provides for future election. But the word “continue” relates to past election. It is therefore out of order.

The Honourable Sardar Abdur Rab Khan Nishtar : May I know under what law I cannot introduce any sub-rule which is new? I would like to know what law debars me from proposing absolutely a new rule which is not here. Let him quote any law either from the Constituent Assembly Rules or any other law of any other association or body which bars me from introducing a new subject in the rules. I want that the present sub-rule should not only deal with the eligibility, but it should also deal with the right of a Member to continue to be a Member.

Mr. Bhupendra Kumar Datta : This amendment says it must be relevant and your amendment is not relevant to section 5.

The Honourable Sardar Abdur Rab Khan Nishtar : I am extremely sorry.

Dr. Mahmud Husain (East Bengal : Muslim) : A point of order, Sir.

Mr. Chairman : A point of order has been raised. There can be no point of order to another point of order. When one point of order is not finished, an Honourable Member cannot raise another point of order. We have to deal with the first point raised to see whether that point of order has any force or not. If you have any objection to the raising of that first point of order, you will have an opportunity to express your views later on when the turn comes to you.

The Honourable Sardar Abdur Rab Khan Nishtar : Sir, I am sorry to say that he is not in a position to understand me. I would rather say I am not in a position to make him understand me. Let him read rule 30, and then he will understand rule 31. Rule 30 says—

“A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the Chairman.”

It means that if a subject has to come before the Assembly it has to come in this form. A motion has to be moved and the Honourable the President has put it as a question before the House. Now, if the motion is moved then the Honourable Members are entitled to put an amendment to such a motion. It has been laid in Rule 31 that an amendment which is intended to be moved by certain Honourable Member to the *motion*—and not to the rules or anything of the sort—I emphasise the word motion, that is before the House, that amendment should be relevant. That means that if the motion deals with cabbages, then the amendment should not deal with kings. It must have something to do with the motion, as otherwise it will be out of order. So far as this rule is concerned, it has nothing to do with the amendment I have moved that certain sub-rule which already exists in the Constituent Assembly Rules should be substituted by another sub-rule.

Mr. H. S. Suhrawardy (East Bengal : Muslim) : That deals with cabbages and not kings.

The Honourable Sardar Abdur Rab Khan Nishtar : It is not the motion before the House to which I am moving my amendment. I am making an amendment to rule which is already passed. Its decision has already been incorporated in the rules.

Mr. Bhupendra Kumar Datta : That can come as an amendment to another rule.

The Honourable Sardar Abdur Rab Khan Nishtar : Unfortunately I am talking law, and I cannot make everybody a lawyer. I was submitting that rule 31 has nothing to do with my motion. This motion is for the substitution of a new sub-rule which deals with a subject incorporated under rule 5, and I want to extend its scope.

This House has got the right to frame its rules, and it has got the right to amend its rules, to change its rules, to alter the same, or to pass a new rule, or to omit any rule altogether. It can do anything else as far as it lies within its powers to do, so long as any enactment does not come in its way. This Assembly is a Sovereign Body. And this point is repeated *ad nauseam* sometimes by Honourable Members of the side which has raised this point of order. This Assembly is a Sovereign Body. Every body knows that it is a Sovereign Body. It has got power to frame its own rules. Therefore it can alter any rule. It can limit any rule. It can extend any rule. It can omit, or it can do anything else. As a matter of fact it can do everything excepting making a man a woman or a woman a man.

Sir, so far as Rule 31 is concerned, this relates to amendments to motion, and not to amendments to rules that already exist. Therefore, Sir, even if there was any force in the point of order this rule is applicable to amendments moved by various Members, it has nothing to do with my motion. So far as Mr. Pirzada's amendment is concerned it is strictly relevant to the amendment I have proposed, and therefore it is within the provisions of rule 31. The Honourable Member also referred to two other rules. He objected to the proposal that the decision of the President shall be final in certain matters and he referred to rules 65 and 76. Rule 65 refers to Credentials Committee. Rule 65 says—

“A Credentials Committee shall be set up for the duration of the Assembly for the purpose of dealing with all questions relating to the validity of the title of elected or other Members.

The Committee shall consist of five members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.”

Now, so far as this Credentials Committee is concerned, its functions and duties are only this much that when a person is elected, he has to submit his paper to the Credentials Committee, and they have to examine whether his papers are in order and on the basis of his papers, he is entitled to sit in the House or not. What we have proposed—I in my amendment and with some alterations, Mr. Pirzada in his amendment—relates to the question before election takes place. It has nothing to do with what takes place after election is over and a person comes and presents his credentials to the Credentials Committee. The question is when a dispute arises as to the eligibility of a person, *i.e.*, whether a certain person is entitled to stand as candidate for a certain vacancy or not, then it will not be the Returning Officer whose decision will be final, but that the final decision will be that of the President of this House. This is so far as eligibility is concerned.

Now, so far as the question whether a person can continue to remain or not is concerned, it has again nothing to do with the Credentials Committee because the Credentials Committee comes up after the election and before the Member sits in this House, that is, between the two points. When the election takes place, the person comes, puts in the papers before the Credentials Committee and they examine them and after that they say : “Well, his papers are in order

and he is entitled to sit.” But when he takes his seat, and after that he incurs some disqualification under certain rules, then it will be for the President to call upon him why his seat should not be declared vacant. The Credentials Committee has nothing to do with him at this stage when he has already taken his seat. It is only when he has not taken the seat and he has yet to take his seat, that his papers are to be examined by the Credentials Committee, so neither the Credentials Committee has anything to do with the pre-election time and nor it has anything to do with the “pre-occupation stage”, if I may be permitted to coin such a term. You know, Sir, as long as a person has not taken an oath, he is not entitled to even sit in the House and so far as the question of oath is concerned, it arises after the Credentials Committee has examined the papers. When that Committee approves the gentleman comes in, takes the oath and becomes full-fledged Member. If later on he incurs disqualifications then something has to be done. That is not a question of credentials. It is a question of incurring disqualification and the penalty of disqualification which may come even towards the end of the life of this House and any time it may occur. How a person incurs disqualification? It has been proposed that a person who does not owe allegiance to Pakistan or owes allegiance to any other State, he would be disqualified to sit in this House, though his papers were found in order by the Credentials Committee. If a man owes allegiance to Pakistan, but after some time, he takes it into his head and he wants to change his allegiance to some other State, then the moment he owes allegiance to another State, he incurs disqualification under the proposed amendment, and when he incurs this disqualification, then it is not the Credentials Committee that comes in, but it is some other authority and that authority is proposed to be the President of this House. Therefore, I would submit, Sir, that rule 65 has nothing to do with the matter in question. There is one stage when the election takes place. There is another stage when the person after election has to sit in the House and the third stage is when he sits in the House and after that incurs disqualification. What we intend to do is that the President shall have power over him as long as he is not elected, his right and eligibility to stand for election is questioned and after he becomes a Member, if he incurs any disqualification, then in that connection, the President should be the authority to deal with him.

The third rule that has been mentioned is rule 76. Rule 76 says—

“No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”

Now, it has again nothing to do with what I have proposed. What I and Mr. Pirzada propose is that when election has not taken place how the eligibility of a person is to be decided. First of all, it is to be proved that he is eligible to stand as a candidate. Somebody has to decide that question and I have proposed that in deciding that question, the President should have the final authority. But so far as election petition is concerned, that stage comes only when a person is actually elected. It is after the election that another person can submit election petition. With all respect to the Honourable Member and to those who support him, I would say that their objection is the result entirely of confused thinking. A little differentiation between the various stages to which the authorities of various committees and various personnel relate will clear the position. There is one question that arises at the time of standing as a candidate for election. The second stage is when he actually is elected and by election petition it has to be decided; the third stage is when he comes to sit in the House. Then his papers are to be examined by the Credentials Committee. And the fourth stage is when he incurs disqualification—there should be some person to decide the question. I submit, Sir, that rule 31 has nothing to do with my motion. First of all his point of order is not relevant to my motion at all. It was relevant to other amendments that are proposed to my amendment but as I explained to you because these amendments are within the scope of the motion that I have made and, particularly, that of Mr. Pirzada's, rule 31 does not bar

[The Hon'ble Sardar Abdur Rab Khan Nishtar.]

them. So far as the other two rules are concerned, they relate absolutely to different stages and have nothing to do with the stage with which we want to deal. Therefore, I would submit, Sir, that this point of order is baseless.

***Mr. Dharendra Nath Datta :** May I submit Sir, the point that has been raised by my Honourable friend is.....

The Honourable Sardar Abdur Rab Khan Nishtar : Sir, I may also submit that according to the practice of various legislatures, no debate is allowed on a point of order. A point of order was raised and if any person wished to lend his support to the point of order, he should have done so before I had replied. It is really very strange that against a certain person a point of order has been raised, the President calls upon him to give a reply and after he has replied, there is going to be further debate. In that case there will be reply to reply and then again reply to reply and there will be no end of it. That is why I say that so far as this point of order is concerned, there should not be any debate about it.

Mr. Chairman : I think the practice in regard to discussion on a point of order in various legislatures is not quite uniform. I have experience of legislatures where some sort of a debate is permitted.

The Honourable Khwaja Shahabuddin (East Bengal : Muslim) : It is at later stages.

Mr. Chairman : However, a very important question has been raised and I think, I can hear briefly to the person if he has anything real to contribute.

***Mr. Dharendra Nath Datta :** Mr. Chairman, Sir, by the point that has been raised by my Honourable friend, it is clear to me that both the motions are out of order because they are repugnant to sub-rule (4) of rule 6. In rule 6, you will find that—

“When a vacancy occurs by reason of death, resignation or otherwise, in the office of a Member of the Assembly, the President shall notify the vacancy in the *Gazette* and call upon the constituency concerned to elect a person for the purpose of filling the vacancy.”

Then Sir, sub-rule (4) of rule 6 says :

“A candidate for a vacancy shall be one who could be elected by the constituency concerned under the Statement of the Cabinet Mission to India and His Excellency the Viceroy, dated May 16, 1946, read with the Statement of His Majesty's Government, dated June 3, 1947”.

That is, Sir, it says that a candidate should be one who could be elected under the Statement of 16th May, 1946, read with the Statement of 3rd June, 1947. If you refer to the Statement of May 16, 1946, paragraph 19 of the Statement says :

“We therefore propose that there shall be elected by each Provincial Legislative Assembly the following numbers of representatives, each part of the Legislative Assembly (General, Muslim or Sikh) electing its own representatives by the method of proportional representation with single transferable vote.”

Paragraph 19 of the Statement only says that the Members of the Legislative Assembly shall be elected Members and there is no other qualification. Paragraph 4 says that if a candidate could be elected under the Statement of 16th May that person can stand as a candidate for filling up the vacancy caused by death, resignation or otherwise as laid down in rule 6. Then, Sir, you will find that this paragraph 19 has been referred to in the Statement of June 3, 1947. Then, Sir, it was decided that India be partitioned and in paragraph 14 of the Statement of June 3, it is stated that if it is decided that

* Speech not corrected by the Honourable Member.

Bengal and Punjab be partitioned, how election shall be held. If it is decided that Bengal and Punjab be partitioned, as it was decided, it will be necessary to hold fresh elections to choose representatives on the scale of one for every one million of population.

Then, Sir, with regard to the point raised by the Honourable Sardar Abdur Rab Nishtar he has forgotten that he seeks to amend sub-rule (5) of rule 6. Sub-rule (5) of rule 6 refers to the election that will be held after the vacancy has occurred. It does not relate to the removal of a Member. Here, Sir, in both the motions and in both the amendments that are sought to be made, not only he refers to the election which will be held but he refers to the removal of the existing Members. If that is to be done, that cannot be done by the amendment. You will have to introduce fresh rules. Sub-rule (5) relates to future election and I think, Sir, the question of sovereign authority does not arise.

Mr. H. S. Suhrawardy : I join issue with the Honourable Sardar Abdur Rab Nishtar. He himself has contended by saying that a rule which provides for cabbages, *viz.*, those who will be subsequently elected, cannot provide for kings, *viz.*, those who have already been elected. Whereas this rule proposes to amend a rule which provides only for cabbages and not for kings. Here, Sir, you will see that the amendment to the rules refers to kings who are outside the category of cabbages. There is one point also, namely, that the Constituent Assembly is sovereign and can make or unmake any laws but it is limited by its own rules and so long as those rules which limit its powers are not changed it cannot pass a rule which conflicts with those rules.

The last point which has been raised by my friend, Mr. Dharendra Nath Datta, is somewhat outside the scope of the observations made by the gentleman, who spoke first but it is a very important point and, that is, that this rule or any rule of this type which refers or creates a disability in respect of the person who has been chosen or who has been elected under the Act itself, such a rule is *ultra vires* entirely. That is a matter which requires more and deeper consideration. If certain persons have been elected no supervening disability can arise except under the rules, for instance, a person has been convicted and has been sentenced to six months' imprisonment or has become a lunatic or something to that effect. Until that disability has arisen it is not possible for this House to create new disabilities in respect of persons who have already been elected under the Act. Certainly it cannot be done by rules ; it can be done by an Act. I, therefore, submit that so far as the amendment of the Honourable Sardar Abdur Rab Nishtar is concerned, although it is true that this Constituent Assembly can frame new rules, it cannot amend a rule for introducing objectives in that rule which is outside the scope of the rule. It is therefore *ultra vires*.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, with due respect to my Honourable friend and the Members on the Opposition side, I raise a point of order. I am sorry to state that they still seem to be living under the ideas when they were in the Provincial or Central Legislatures, when the British Rule was there. They have not yet been able to conceive of their sovereign powers which they have got when they became Members of this Legislature. They are quoting rules, they are quoting statements of the British which we have got every right to change at any stage, and want this Constituent Assembly which is sovereign to be bound by those statements and declarations and rules. I may remind them that this is a sovereign body which has every power to change its rules or to amend its rules. Unlike any other body you can take decisions today and change them at any other time if you like. Therefore, to say that this thing was laid down in the Statement of June 3, 1947, so that there are rules which meet the motion of my Honourable friend, the Sardar Sahib and my amendment, I think it is quite wrong and misconceived to call them *ultra vires*.

[The Hon'ble Pirzada Abdus Sattar Abdur Rahman.]

Now, coming to the appropriateness of the motion moved by Sardar Abdur Rab Nishtar, I am grateful to Mr. Dharendra Nath Datta to have read rule 6 which clearly shows that it deals with casual vacancies. We cannot deal with general elections under that rule, so that this rule can deal only with casual vacancies and casual vacancies are caused by reason of death or resignation or otherwise.—“otherwise” includes everything. Sir, you would be pleased to refer to rule 6, second line of sub-rule (1) of rule 6. It says “by death, resignation or otherwise”. Therefore, Sir, it is quite appropriate to mention in these rules the disabilities that the motion of Sardar Nishtar seeks to introduce in this behalf. Therefore it is quite relevant.

Now coming to the objections raised to the relevancy of my amendment it is quite clear that it is relevant. Rule 31 simply says that it should be relevant to the subject-matter of the motion.

Now what I have done is this. I have only separated the provisions with regard to the new elections and with regard to the sitting Members. That is all I have done, Sir, and I have said that there should be allegiance to the State of Pakistan and to no other State. The scope of the motion is the same and so far as (b), (c) and (d) are concerned, (d) is exactly the same as No. (iii) of Sardar Abdur Rab Nishtar's amendment and so far as (b) and (c) are concerned it is an amplification of the procedure already suggested by Sardar Abdur Rab Nishtar in (ii) of his amendment. Therefore, I do not see how my amendment is irrelevant. All the rules quoted by him simply lay down this principle that this Constituent Assembly is sovereign. Once it makes a rule it is bound by it. If it requires any consequential amendment of any rule that is quite a different matter altogether, but it does not deal with the competency of this House at all. This House is competent to change any rule it likes and therefore if in consequence of this amendment any other rule has subsequently got to be amended it does not invalidate the motion of Sardar Abdur Rab Nishtar or my amendment at all. Therefore, Sir, I submit that it is quite in order and if my Honourable friend thinks what there is need for a consequential amendment later on it can be taken up in due course.

Mr. Chairman : I would like first of all to make one general observation with regard to the point of order that has been raised.

I agree entirely with those Members who have referred to the sovereign character of this body. This Assembly is now attempting to amend certain rules which were made by the Assembly itself. About the competency of the Assembly to change its own rules there is no doubt. All that has been said against the attempt to make these changes or against the amendments proposed amounts to this that it is being done in a clumsy way. If it comes to that then I must say that it is not a point of order. I cannot rule this out of order on a ground like that. You can persuade them to do it in a way which you think to be best but I cannot rule that because it is not being done in a manner which is desired by certain Members of this House it is out of order. With this general observation I would like to refer to the particular points that have been raised.

First of all, the question of relevancy has been raised and rule 31 (1) has been referred to. It runs thus :

“ 31. (1) An amendment must be relevant to the motion to which it is proposed.”

I do not know why it has been contended that the amendment is not relevant to the motion. What is after all an amendment? An amendment seeks to alter a particular proposition. Either the amendment may seek to add to it or subtract from it but it cannot actually bring in something which has a negative effect on the original motion. Save and except that, anything is

permissible. The objection is that something new is going to be introduced. It is precisely for this purpose, that is to add something new that the amendments are proposed. I cannot rule that the amendment is out of order on that ground.

Then again rule 65, which relates to the Credentials Committee, has been referred to. The Honourable Sardar Abdur Rab Nishtar has dealt with it at some length, and I do not think that I should try to reply to every point that has been raised. My general observation is that this sovereign body can change its own rules in any manner it likes. That will cover this point.

Then a reference has been made to rule 76, which runs thus—

“ 76. No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”

This is altogether a different matter, namely, whether an election has been held according to certain prescribed rules. That is the only matter which an election petition generally deals with but here that question does not arise at all. The amendment proposed goes to the very root of things and one of those things is whether a Member who does not owe exclusive allegiance to the State of Pakistan can be a Member, or can continue to be a Member. That is a vital question and I do not think in dealing with the amendments we are limited by anything whatsoever, except our own Rules of Procedure. If any Honourable Members had shown that the amendments proposed were not in accordance with the rules which we have already framed then I think I would have agreed with them and have declared these amendments out of order, but as nothing like that has been pointed out I am sorry I cannot say that the amendments in question are out of order.

Mr. H. S. Suhrawardy : You have not dealt with the point that it is not possible by means of a rule to amend the Indian Independence Act and create a disability not contemplated by the Independence Act. You may have seen Sir, that Mr. Dharendra Nath Datta raised that point.

The Honourable Sardar Abdur Rab Khan Nishtar : Is it a point of order against the ruling of the Chairman ?

Mr. Chairman : Mr. Dharendra Nath Datta raised the point that at the time when a person was made eligible to become a Member of this House all that was required was that he should be elected by the Legislature there.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Can we discuss the ruling of the Chair after it has been delivered ?

Mr. Chairman : He is not discussing my ruling. He is only pointing out that in giving my ruling I did not refer to a point that had been raised by Mr. Dharendra Nath Datta.

The Honourable Pirzada Abdus Sattar Abdur Rahman : That is discussing the ruling....

The Honourable Mr. Liaquat Ali Khan (East Bengal : Muslim) : May I request Mr. Suhrawardy to point out that particular section of the Indian Independence Act to which he is referring ?

Mr. H. S. Suhrawardy : I have not got the Indian Independence Act with me but the Honourable Member knows that certain persons have been elected under the Indian Independence Act with certain qualifications and the particular Legislative Assembly has proceeded to elect certain Members. Now, Sir, the point is whether you can by a rule bring about a disability in respect of those Members. They have been elected in accordance with certain franchises ; they have been elected in accordance with certain qualifications and the question is whether you can by a rule bring about a supervening disqualification. I would submit not. You can do it under the Constitution Act when your Act comes to be framed but by a rule you cannot bring about a

[Mr. H. S. Suhrawardy.]

supervening disqualification which did not exist at the time when the man was elected.

The Honourable Mr. Liaquat Ali Khan : May I point out to the Honourable Member that it would have been much better if he had studied the Indian Independence Act before raising the point of order as there are no qualifications laid down in the Indian Independence Act with regard to Members ? All that it mentions is that the Constituent Assembly of Pakistan will be the Constituent Assembly as the Governor-General may have appointed or may, hereafter, appoint. That is all.

Mr. Chairman : The point raised by Mr. Datta is this. He referred to sub-rule (4) of rule 6 which says 'A candidate for a vacancy shall be one who could be elected by the constituency concerned under the Statement of the Cabinet Mission to India' and so on, so forth. That is again a rule that has been framed by this body and I do not know why that rule cannot again be changed by means of another rule. The Honourable Mr. Liaquat Ali Khan has pointed out that the Indian Independence Act section to which Mr. Suhrawardy refers has not been specified. I am, therefore, passing no opinion regarding that.

Mr. Dharendra Nath Datta : The rule that you are going to frame is repugnant to the rule which exists and that is sub-rule (4) of Rule 6.

Mr. Chairman : Order, order. Now let us get on with the amendments.

Mr. Jnanendra Chandra Majumdar (East Bengal : General) : I beg to move :

"That in clause (1) of the proposed sub-rule (5) of rule 6, the words and commas 'or, continue to remain a member of,' be deleted."

and—

"That clauses (ii) and (iii) of the proposed sub-rule (5) of rule 6 be deleted."

Mr. Chairman : Motions moved :

"That in clause (i) of the proposed sub-rule (5) of rule 6, the words and commas, 'or continue to remain a member of,' be deleted."

another :

"That clauses (ii) and (iii) of the proposed sub-rule (5) of rule 6 be deleted."

Then amendments to amendments.

Mr. Dharendra Nath Datta : Sir I move :

"That for the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of Rule 6 of the Constituent Assembly Rules, the following be substituted:—

(5) (a) A person shall not be eligible for being nominated for election unless—

(i) he has been a permanent resident of Pakistan, or

(ii) he has been residing in a house in Pakistan for not less than six months since the 15th of August, 1947.

*Explanation (1).—*A person shall be deemed to be a resident of Pakistan if he ordinarily resides in Pakistan or has got a dwelling house therein ready for occupation in which he occasionally dwells.

*Explanation (2).—*A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

(b) If a dispute arises as to the eligibility for being nominated for election, the dispute shall be decided by the Returning Officer for the election and his decision shall be final.

(c) A member shall cease to be a member of the Constituent Assembly—

(i) if he abandons his place of residence in Pakistan and continues to live outside Pakistan for a year from the time when he abandons his place of residence and declare that he does not owe any allegiance to the Federation of Pakistan, or

- (ii) if for sixty days, he is absent without permission of the Constituent Assembly from all meetings thereof:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Assembly is adjourned for more than four consecutive days.

(d) If a dispute arises as to the fact whether a member has ceased to be a member under the preceding sub-section, the matter shall be referred to the Credentials Committee of the Constituent Assembly and its decision shall be final."

Mr. Chairman : Motion moved :

"That for the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of Rule 6 of the Constituent Assembly Rules, the following be substituted:—

"(5) (a) A person shall not be eligible for being nominated for election unless—

(i) he has been a permanent resident of Pakistan, or

(ii) he has been residing in a house in Pakistan for not less than six months since the 15th of August, 1947.

*Explanation (1).—*A person shall be deemed to be a resident of Pakistan if he ordinarily resides in Pakistan or has got a dwelling house therein ready for occupation in which he occasionally dwells.

*Explanation (2).—*A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

(b) If a dispute arises as to the eligibility for being nominated for election, the dispute shall be decided by the Returning Officer for the election and his decision shall be final.

(c) A member shall cease to be a member of the Constituent Assembly—

(i) if he abandons his place of residence in Pakistan and continues to live outside Pakistan for a year from the time when he abandons his place of residence and declares that he does owe any allegiance to the Federation of Pakistan, or

(ii) if for sixty days he is absent without permission of the Constituent Assembly from all meetings thereof:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Assembly is adjourned for more than four consecutive days.

(d) If a dispute arises as to the fact whether a member has ceased to be a member under the preceding sub-section, the matter shall be referred to the Credentials Committee of the Constituent Assembly and its decision shall be final."

Next amendment.

Mr. Jnanendra Chandra Majumdar: Mr. Chairman, Sir, I beg to move :

"That in clause (a) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be deleted:—

'In case of dispute with regard to the question of eligibility the decision of the President shall be final'."

"That clauses (b), (c) and (d) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of Rule 6 of the Constituent Assembly Rules, be deleted."

Mr. Chairman : Motions moved :

"That in clause (a) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be deleted:—

'In case of dispute with regard to the question of eligibility the decision of the President shall be final'."

"That clauses (b), (c) and (d) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of Rule 6 of the Constituent Assembly Rules, be deleted."

I think no other amendment remains unmoved.

The Honourable Khwaja Shahabuddin : May I at this stage suggest that if we adjourn for *Asar* Prayer now and after *Asar* Prayer we take up the discussion it will be convenient for everybody.

Mr. Chairman : Yes, I think so. As this is the first time that we are going to adjourn for prayers I would like to know the views of Members as to the period of adjournment. I think 15 minutes will suffice.

The House stands adjourned for 15 minutes for *Asar* Prayers.

The Assembly then adjourned till Quarter Past Six of the Clock for *Asar* Prayers.

(The Constituent Assembly re-assembled at Quarter Past Six of the Clock after an interval of fifteen minutes for *Asar* Prayers.)

Mr. Chairman : I am told that some Members are present who have to make the prescribed oath or affirmation of allegiance to the Federation of Pakistan. They may do so now.

MEMBERS SWORN

1. Malik Mohammad Firoz Khan Noon.
2. Mian Muhammad Iftikharuddin.

AMENDMENTS TO RULES OF PROCEDURE OF THE CONSTITUENT ASSEMBLY OF PAKISTAN—*concl'd.*

Mr. Chairman : The main motion and the amendments are now open to discussion. I think it would be better if the movers of the main motion and the consequential amendments be taken first. Mr. Nishtar, would you like to speak ?

The Honourable Sardar Abdur Rab Khan Nishtar : Sir, I have already spoken.

The Honourable Pirzada Abdus Sattar Abdur Rahman : Sir, my amendment does not make much difference in the motion moved by the Honourable Sardar Abdur Rab Khan Nishtar. On the contrary, in one respect, it brings an improvement in favour of the Members, which should be welcome. Sir, Sardar Abdur Rab Khan Nishtar has proposed a minimum of six months' stay after the 15th August, 1947, in order to entitle the Members to continue to be members or to offer themselves as candidates. I have taken that off and I have combined parts (1) and (2) of this motion and I have said that whosoever has been a permanent resident or becomes a permanent resident, deserves the necessity of remaining a Member after the 15th August, which I think would have been difficult for several Members, because of the present state when the population is still shifting and people would have not made permanent homes anywhere definitely, I thought it would be unfair for the Members to have this minimum of six months and, therefore, if anybody had become a permanent Member to the satisfaction of the President, then he is entitled to become a member and continue to remain as a Member. Another important point that I have brought forward is that he should owe allegiance to Pakistan and to no other State. This was very necessary and I do not think any Member from the other side also would challenge this, because from the amendments that they have moved I find that they have agreed on this characteristic at least. In view of the amendments that they have moved, it is very necessary that a person who is a Member of this Sovereign Legislature and who owes allegiance definitely to Pakistan, there can be no question of owing allegiance to two States or of owing allegiance to Pakistan as well as any other State. As it is necessary that the Members of this House should remain within Pakistan permanently and nowhere else, therefore, Sir, I thought both these aspects to be very necessary. One is that he should be a permanent resident or should become a permanent resident and, secondly, that he should owe allegiance to Pakistan and to no other State. There cannot be any question

of double allegiance. Therefore, Sir, it is very definite and very necessary that this provision should be made in the rules. So far as other parts of my amendment are concerned, I have only laid down the procedure very clear and unambiguous. First of all, if any question as to the eligibility arises at any time whether a person was a permanent resident or was not a permanent resident, then there was no provision made in the motion moved by the Honourable Sardar Abdur Rab Khan Nishtar as to who will decide whether a Member was a permanent resident or not. So I have provided that the President can decide any such question.

Now, as regards the procedure, Sir, I have made it clear that if the President has any reason to believe that any one of those disqualifications has been incurred or is there, he should call upon the Member to show cause, within a period to be fixed by him, as to why his seat should not be declared vacant. It is the same as part three of the motion and I have only included it in my amendment so as to make it one solid motion. As I have submitted, this is advantageous to Members and very clear and, therefore, my amendment should be accepted.

Mr. Chairman : Mr. Dharendra Nath Datta.

Mr. Dharendra Nath Datta : Shall I speak, Sir, on all the amendments, including the amendment of the Honourable Mr. Abdus Sattar Pirzada ?

Mr. Chairman : One point we have to make clear first. Will Sardar Abdur Rab Khan Nishtar press his motion or will he accept any of the amendments that have been moved ?

The Honourable Sardar Abdur Rab Khan Nishtar : Sir, I will accept the amendment of Mr. Abdus Sattar Pirzada. (*Loud cheers.*)

Mr. Dharendra Nath Datta : Mr. Chairman, Sir, in view of the statement made by Sardar Abdur Rab Khan Nishtar that he is going to accept the amendment of Mr. Abdus Sattar Pirzada, we take this amendment as moved from the Government side. Then, Sir, it comes to this.

Sir, the amendment that is sought to be moved is this, that with regard to the eligibility of future Members two things shall have to be proved, *viz.*, that he has been or has become a permanent resident of Pakistan, and that he owes allegiance to Pakistan and "to no other State". At the time when he offers himself as a candidate for election those two things shall be proved conjunctly and not disjunctly. If anybody disputes his eligibility for election on the ground that he does not owe any allegiance to the State then the eligibility shall be determined by the President of this House. This, Sir, is really restricting the right of a citizen to stand as a candidate for membership in this House. Mr. Chairman, you know at present a person is entitled to be a Member of this House if he is a national of Pakistan or he has accepted the domicile of Pakistan. Then, Sir, what is sought to be amended is this : that a person can stand as a candidate for being elected to a vacancy that has been caused if he can prove that he has been a resident of Pakistan or has become a resident by residing in Pakistan for six months since 15th August, 1947, and he owes allegiance to Pakistan. With regard to allegiance it has been provided in rule 4 that after he has been elected he shall have to take the oath of allegiance, and if he refuses to take the oath of allegiance his seat shall be declared vacant. This provision has already been made, and so if a Member intends to be a candidate he really declares his intention that he owes allegiance to the State because if he be elected he will not remain a Member of this House unless he takes the oath of allegiance. If he refuses to take this oath his seat will be declared vacant. So Sir, at the initial stages if a person disputes the fact that he owes allegiance then the question shall be determined by the President. The President shall decide it and his decision shall be final as respects eligibility. There is nothing in the motion how the President

[Mr. Dharendra Nath Datta.]

shall decide. The President shall decide the question of allegiance and eligibility as soon as a particular candidate stands for election. In the motion there is no definition of residence. When there is a question of permanent residence of certain Members in certain places, the word residence has been defined. In Government of India Act you will find that the word residence has been defined. It has been defined differently in different Provinces. In all cases where the question of residence comes in, if he resides in a particular place for a particular time he is entitled to stand as a candidate.

The Honourable Sardar Abdur Rab Khan Nishtar : Here also it is stated—not less than 180 days.

Mr. Dharendra Nath Datta : In case of dispute, with regard to the question of eligibility the decision of the President shall be final. Dealing with clause (a) of rule 5 it says—

“ Unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State.”

Sir, there is no definition of residence and if there is no definition of residence, it is left to the sweet will of the President. The question deals with the mental make up or psychology of a particular candidate, who shall have to determine whether he owes allegiance or not. In no country in the world has it been provided under any rule that a person is not entitled to be a candidate unless and until it is determined by the President that a person owes allegiance to a particular State. If you refer to the Government of India Act, 1935, not only the Government of India, but if you refer to the constitutions of the whole world, you will not find a provision like this that a person before he is entitled to stand as a candidate, his eligibility is questioned, and his allegiance is questioned, and whether he owes allegiance to this particular State or that shall be determined by the President beforehand. This is restricting the power of the individual. Under the Government of India Act we find that after one has become a Member of the House, he shall have to take the oath of allegiance, and it is provided for in the Government of India Act that after one becomes Member of the House, one shall have to take the oath of allegiance as provided for therein. So the question of oath of allegiance in the initial stages does not arise. This is restricting the right of citizens.

Then, Sir, with regard to clause (a), I think the House will consider that residence should be defined. In the initial stages what has to be determined is only the question of residence. Now let us see what is meant by residence. Residence has been defined in Government of India Act itself. If a particular person who is a resident of Pakistan serves in India or in any other State for a sufficiently longer period, the question arises whether he is a resident of Pakistan. We know the facts that there are many persons who are residents of Pakistan but serve elsewhere. In Eastern Bengal he may have a dwelling house. His family may be staying in East Bengal, and he may be doing service in Calcutta or any other place for a long period. Will he be deemed to be a resident of Pakistan, or will he thereby be deemed to be a resident of the other State in which he serves. I have, therefore, made a provision that a person shall be deemed to be a resident if he has a dwelling house and I have made a provision to this effect in the amendment for this purpose. My amendment says : “ for the purpose of this rule proof that a person owns a family dwelling house or a share in a family dwelling house in Pakistan and that that house has not during the twelve months preceding the date on which the member has been called upon to show cause been let on rent, etc.”

I have got a house for dwelling in Pakistan. My family lives there. I was born there, and I intend to die there. But I was serving in Calcutta for twenty years. Now in that case I find from the provisions of the rule here that I shall

not be considered a resident of Pakistan. Sir, I appeal to the House to consider this amendment dispassionately. Then, Sir, with regard to rule (b) it reads as under :—

“ Any Member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President as to why his seat should not be declared vacant.”

Then, Sir, what is this clause (b)—

“ Any Member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.”

In clause (a) is defined a conjuncting clause and what it says is this :

“ No person shall be eligible for election to the Constituent Assembly of Pakistan, unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.”

Sir, if the President believes that he has not been and is not permanent resident of Pakistan, then his seat will be declared vacant. The President of the House is made the authority to decide the matter. But, Sir, supposing if an enemy of mine comes and gives a wrong information to the President and he has reason to believe, that, in spite of the fact that I have taken the oath of allegiance to Pakistan, my seat will be declared vacant. It has not to be proved even before a Court of Law. The President will only declare my seat vacant.

The Honourable Sardar Abdur Rab Khan Nishtar : He will call upon you to show cause.

Mr. Dharendra Nath Datta : Yes, he will only call upon me to show the cause, but his decision cannot be challenged in a Court of Law and his decision will be final. I know, Sir, that one's seat can be declared vacant in the case when he abandons the place of residence and decides to live elsewhere outside Pakistan for a year or so, and not only this, but he himself declares that he does not owe allegiance to Pakistan, then and then only, Sir, his seat may be declared vacant. If I owe allegiance to Pakistan, who is there to challenge me and who is there to challenge my allegiance to the State. If a person has taken the oath of allegiance, his seat cannot be declared vacant when he owes no allegiance to any other State. He has taken an oath firmly that he owes allegiance to Pakistan, then in that case, there is nobody to challenge him. The Honourable Member cannot be presumed to be dishonourable Member, when he has taken the oath of allegiance. We have come here to serve Pakistan and we owe allegiance to Pakistan. Is there anybody, Sir, to question my allegiance unless I myself declare it otherwise before a Court of Law. So, Sir, there is no reason why the seat of a person be declared vacant when he has not given any resignation actually or has refused to take an oath of allegiance. After all, we have taken the oath of allegiance. Sir, these doubts and suspicions will not do. I know in many cases, Sir, information may have been given by an enemy to the highest person of the State that one is preaching disloyalty to the detriment of the State to which he owes allegiance. I challenge anybody to come forward. I say, we have been born in Pakistan and we shall die here. I owe allegiance to the State and I have every right to criticise the actions of the Government and by criticism one may be treated as an enemy of the State. Here is a question that a person has been criticising the Government which was not required of him. It is a psychological fact. It is the duty of every person to criticise a Government, which goes wrong and every one has a right to change such Government.

Mr. Chairman: Do you think that this amendment seeks to prevent criticisms of Government's actions?

Mr. Dharendra Nath Datta: Yes, Sir, it prevents to criticise the Government. This House may be given information that so and so does not really owe allegiance to this State, but owes allegiance to another State, then the President should declare his seat vacant.

Some Honourable Members: No, no.

Mr. Dharendra Nath Datta: No, no. But I say, yes.

The Honourable Sardar Abdur Rab Khan Nishtar: This is a pure flight of imagination.

Mr. Dharendra Nath Datta: Then, Sir, if you look to the constitutions of the whole world, you will not find that there is any such provision anywhere. There is a provision as to declare the seat of a particular member vacant if he had committed certain offences. There is no such provision that his seat will be declared vacant if one suspects that he does not owe allegiance to the State.

We have criticised the late British Government and launched Civil Disobedience Movements and yet our seats in the Legislature were not declared vacant because it was the Government of India Act which was in force there. We have fought against the British Government and we have launched Disobedience Movements. We have even gone to the Court and stated that we refuse to recognise the Court and yet our seats have not been declared vacant.

Sir, we find that after we have attained our independence, the rules are being made worse for us. I submit, Sir, that this is nothing but what may be called arbitrary. It is a pure totalitarianism.

Then, Sir, I have provided, as in the Government of India Act, that a man's seat should be declared vacant if he does not take the oath or if he is absent from the Constituent Assembly for sixty days without the permission of the Chairman, then his seat may be declared vacant. Then, you will see, Sir, Mr. Chairman, that there is a provision in the Assembly Rules that as soon as the vacancy occurs, the Speaker of the Provincial Legislative Assembly—you know that the Members of this House are elected by votes of the Members of the Provincial Assembly—the Speaker of the Provincial Legislative Assembly shall appoint a person to act as Returning Officer for the election. He will also decide whether a candidate is eligible to stand as a candidate for the seat. Now supposing I stand as a candidate and another person also stands as a candidate, then, Sir, the question arises whether I am entitled to stand as a candidate, then the only thing that I am a citizen of Pakistan is the determining factor. Now, what is the function of the Returning Officer. Then a dispute arises as to eligibility of a candidate to stand for the seat, the Returning Officer gives his decision and that decision is final. Of course, I have not stated that his decisions shall not be challenged in any court of law. I say his decision will be final so far as that decision is concerned. So, Sir, his decision with regard to the eligibility of a person to stand as a candidate shall be final.

Then, Sir, with regard to the fact that as to whether my seat shall be declared vacant, that can be declared vacant as I have contended on the happening of two contingencies—(i) if I cease to be a resident of Pakistan and (ii) if I myself declare that I do not owe allegiance to the State, then alone my seat can be declared vacant and if a dispute arises as to whether my seat will be declared vacant or not, I have provided for that purpose, the Credentials Committee shall decide that. Some time before I have heard that this Credentials Committee shall deal with questions of election petition submitted by a candidate who has been unsuccessful but if you read the rule,

you will find that there is laid down that a Credentials Committee shall be set up for the duration of the Assembly for the purpose of dealing with all questions relating to the validity of the election.

Of course, if we make a rule that if a person who has been elected a Member of the Assembly ceases to be a resident of Pakistan or he of his own declares that he does not owe allegiance to the State, that can be decided by the Credentials Committee. I have stated that the decision of the Credentials Committee shall be final.

You know, Sir, and the Honourable Sardar Abdur Rab Nishtar knows that when there is a provision in a certain section that "decision will be final" and it has not been stated that it shall not be challenged by anybody, that does not constitute that it cannot be taken up to the Supreme Court. The Supreme Court of the State is the highest Judiciary. This Judiciary should be free from the executive and should be independent of the executive and this will protect the rights and privileges of the people of the State.

So, Sir, I fully agree with my friend, Mr. Sur, that the amendment of Honourable Pirzada encroaches upon the rights of the citizens of the State and therefore it is worse, it is arbitrary and totalitarian. With these words, I oppose the amendment.

Mr. Jnanendra Chandra Majumdar : Mr. Chairman, Sir, as regards my amendment, most of the arguments have been given by the previous speaker, the Honourable Mr. Dharendra Nath Datta. But there are certain points to which I want to refer in this connection. My first amendment deals with that portion of the proposed amendment that refers to disputes that may arise during an election to fill up a vacancy. This House has adopted a set of elaborate rules in the matter. I do not find any reason why in place of these rules a new one is sought to be introduced. Sir, I am referring to Chapter XI of the Constituent Assembly of Pakistan Rules of Procedure. I am quoting here some of the Rules—

76. Election petition.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

77. Presentation of petition.—(1) An election petition against any returned candidate may be presented to the President by any candidate or elector on the ground of any irregularity or corrupt practice.

(2) An election petition shall be deemed to have been presented to the President when it is delivered to the President or to any officer appointed by him in this behalf :

(a) by the person making the petition ; or

(b) by a person authorised in writing in this behalf by the person making the petition.

78. Limitation.—An election petition shall be presented—

(a) in the case of the first elections to the Assembly, within fifteen days from the date on which these rules are published in the Gazette ;

(b) in the case of subsequent elections within thirty days from the date on which the results of the elections are published in the Provincial Official Gazette :

Provided that if the person making the petition satisfies the President that sufficient cause existed for his not presenting the petition within the period prescribed in this rule, the President shall have discretion to condone the delay.

* * * * *

80. Reference to Credentials Committee.—(1) If the provisions of rule 77 or rule 78 or rule 79 are not complied with, the President shall dismiss the petition.

(2) If the petition is not dismissed under the preceding sub-rule, the President shall refer the petition to the Credentials Committee.

81. Inquiry into petition.—The Credentials Committee shall, with due despatch, inquire into the allegations made in the petition and submit a report to the President, either—

(a) recommending that an Election Tribunal be appointed to inquire into the petition ; or

(b) that the petition be rejected ; or

(c) that the election petition be granted.

82. Appointment of Election Tribunal.—Where the Credentials Committee recommends the appointment of an Election Tribunal, the President shall appoint such a Tribunal consisting of one or more than one person to inquire into the petition.

[Mr. Jnanendra Chandra Majumdar.]

83. Powers of Credentials Committee and Election Tribunal.—When inquiring into an election petition, the Credentials Committee and/or the Election Tribunal shall possess all the powers of a Civil Court, including the power to enforce attendance of witnesses and the production of documents. The Credentials Committee and/or the Election Tribunal shall decide its own procedure.

84. Report of Election Tribunal.—On the conclusion of the enquiry, the Election Tribunal shall make a report to the President.

85. Recommendations in the Report.—(1) If in the opinion of the Credentials Committee or of the Election Tribunal, as the case may be, the election of the returned candidate has been vitiated by a corrupt practice of the kind specified in Schedule B to these rules or has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote or the reception of any vote which is void, or if the election has not been a free election by reason of the large number of cases in which undue influence or bribery of the kind described in the aforesaid Schedule to these rules has been exercised or committed, the Committee or the Tribunal, as the case may be, may recommend in the report that the election be declared void and that the petitioner may be declared duly elected or that a fresh election may be held."

* * * * *

Then rule 86 reads—

"**86. Orders of the President on the Report.**—On receipt of the report of the Credentials Committee or the Election Tribunal, as the case may be, the President shall issue orders in accordance therewith and the orders of the President shall be final."

But here everything has been done away with. I do not understand what was the reason ; what justification was there for bringing this amendment.

Then as regards my second amendment, that relates to the removal of a sitting member from his membership, arguments in support of my amendment have been put forward by the Honourable Mr. Dharendra Nath Datta and I do not wish to repeat them.

Sir, my appeal to the Honourable the Mover of this proposition is that we are on the threshold of a democratic form of Government. Let us not turn our direction towards that which may lead to autocracy. With this appeal, I move my amendments.

Mr. Harendra Kumar Sur (East Bengal : General) : Mr. Chairman, the Members of the Constituent Assembly of Pakistan have been elected by the Members of the various Provincial Legislative Assemblies according to the Statement of the Cabinet Mission of India and His Excellency the Viceroy's Statement, dated the 16th of May, 1946, read with the Statement of His Majesty's Government, dated the 3rd June, 1947. Now, Sir, the Members were duly elected and they presented their credentials and signed the roll of Members. Then, Sir, these elected Members framed the Rules of Procedure for the Assembly. They have transacted legislative business as Members of the Dominion Parliament. Recently, Sir, the Members have taken their oath of allegiance to the Dominion of Pakistan. So far there was no question as to the eligibility of the Members for being elected to the Constituent Assembly, but now, Sir, this question of eligibility of elected Members to the membership of the Constituent Assembly has been raised by the amendment of the Honourable Mr. Pirzada, and he has gone, Sir, further. He has raised the question of the *bona fides* of the Members who have taken their oath of allegiance to the State of Pakistan. Sir, to raise the question of the *bona fides* of elected Members who have declared their allegiance on solemn affirmation to the Dominion of Pakistan is going too far. It is against all sense of decency and decorum.

Then, Sir, as a result of the tragic happenings in the Punjab, some of the Members have already resigned their seats and accepted the Indian domicile. As regards others who have not yet taken their oaths according to the rules will be asked to do so ; if they fail, they will automatically cease to be members and their seats will be declared vacant.

I for myself fail to understand why the Honourable the Mover of this amendment has forced the issue upon the Assembly at this stage regarding such an important question of far reaching constitutional importance, an issue which will ultimately have to be decided by the Constituent Assembly in the course of framing a constitution for Pakistan.

However, Sir, I have moved my amendments. As regards the first amendment, Sir, I have simply paraphrased the term "Pakistan national" in the existing rules. Sir, the term "permanent resident" is open to conflicting interpretations and this is the reason why my Honourable friend, Mr. Dhirendra Nath Datta, has brought amendments embodying explanations of the terms "permanent resident" and "ordinarily residing".

As regards the second amendment I take my stand on principle. The Executive should not usurp the legitimate functions of the Judiciary. Sir, the question involved is of very great constitutional importance and it is only fair that the final decision should rest with the highest Judiciary in the Dominion of Pakistan.

With these words, I commend my amendments to the acceptance of the House.

Mr. H. S. Suhrawardy : Mr. Chairman, it is not, Sir, given to every one in this life to be present at one's own obsequies, or to participate in an oration at his own funeral. This is too good an opportunity for me to let pass without making a statement on the Floor of this House, which perhaps may be the last.

Sir, it has been said that these amendments to the rules—fairly intelligible to ordinary human beings but rendered unintelligible to the Pakistan Government and requiring further elucidation—that these amendments have been proposed for the purpose of eliminating such a humble person as myself from the Constituent Assembly. Sir, I refuse to give credence to such a statement. I cannot conceive, Sir, that a State that hopes to be the premier Islamic State of the world, in which there will be justice and toleration, will move its legislative machinery, its party machinery, its government, its party discipline, for the purpose of eliminating a person, whose sole crime was to plead for the cause of the minorities on the Floor of this House, whose sole crime was to direct the attention of the Pakistan Government to its responsibilities towards its own minorities and the attention of the Indian Union Government to its responsibilities towards its minorities; whose further crime it was to plead for a better relationship between the two Dominions. I cannot conceive, Sir, that the Pakistan Government could act in this manner for the purpose of eliminating such a person.

Mr. Chairman : You are replying to something that has not been said here. Please reply to the points which have been raised.

Mr. H. S. Suhrawardy : It will not be said, Sir. The purpose of a motion is sometimes guessed at rather than uttered on the Floor of the House.

7 P.M. As I said, Sir, it is for the world to judge whether you are doing it or not and it is for the world to judge whether you have a mistaken sense of your own responsibilities towards the Pakistan peoples. You are attaching too much of importance to a person who may not happen to be a permanent resident of Pakistan.

Now, Sir, I wish to deal with the subject-matter of the resolution as it stands quite apart from any personal factor. Sir, I will take first portion, *viz.*, eligibility of a person who may seek election to the Constituent Assembly. It is required that he must be a permanent resident of Pakistan, that he has been or has become a permanent resident of Pakistan. Let me deal with this first before I come to the second qualification of allegiance. Sir, I would beg of the Ministry to consider that today matters are in such a state of flux—

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the rights of the peoples have not yet been so defined—that they might as well pause to think before raising such a disability for a person who may seek to be a Member of the Constituent Assembly. I shall explain this a little bit more, Sir. Today it is not known, Sir, who is going to be a permanent resident of this Dominion or of the other. You have not as yet passed your law of nationality. It is not as yet known what disabilities there are regarding citizenship of one State and of another but more than that, Sir, if we consider what is actually taking place, it is not known yet as to who are likely to become permanently the residents of Pakistan or of the Indian Dominion. There are many people here today who are your permanent residents but who perhaps may find it impossible to remain within your Dominion, and who may think of leaving it. God forbid that it should be so. There are many, Sir, outside in the Indian Union who today are not permanent residents of Pakistan and who may be compelled to consider Pakistan a refuge for themselves and become its permanent residents. There are many, Sir, who came here for the purpose of becoming permanent residents of Pakistan and who, because, they could not find adequate amenities, left Pakistan of their own free will. We are, therefore, Sir, still in a state of flux and I think that it would be well if the Ministry were to pause and postpone this matter until matters have settled down and the rights of minorities in both the Dominions have been sufficiently clarified for them to be able to choose one State or the other. Sir, who are after all those who have become permanent residents of Pakistan and who have come from outside. Either they came here for loaves and fishes which Pakistan has provided them or for doing business or commerce or as refugees.

There are many, Sir, who may have to come over to this area and therefore to place a disability like this at this initial stage would be very unfair to them. I ask you to consider, Sir, have you or have you no responsibilities towards the Muslims of the Indian Union and have the Muslims of the Indian Union no rights as regards Pakistan. Is it necessary for them to become permanent residents of Pakistan before they can claim from Pakistan some recognition of their rights?

Sir, let me take your mind back to the time when Pakistan was founded—a homeland for the Muslims, it is true. But it was at that time stated that Pakistan would be the solution of the communal problem. It is on those who demand Pakistan, it is on those who carved Pakistan out of India, on them is the responsibility, more than on anyone else to make all possible attempts to solve the communal problem within Pakistan and outside.

Sir, if you make this rule that it is only a permanent resident of Pakistan who can help you in the Constituent Assembly you are eliminating the Indian Muslims. Believe me, Sir, I want to tell you, that in the minds of those Indian Muslims, who have not come here and do not fall under those categories that I have mentioned, there will be a serious misunderstanding in this respect. It would appear as if the Pakistan Government is eliminating them: it is ruling them out of consideration. There may be, Sir, Indian Muslims who think that they are serving the cause of humanity and by serving the cause of humanity they are serving the cause of Pakistan much better by staying there and yet who have the right to come here and help in moulding the Constitution of Pakistan. There are many, Sir, who may feel that the best way of serving Pakistan is to direct the attention of Pakistan Government to its treatment towards its minorities so that the minorities in the Indian Union—so that the Muslim minorities there—may equally be kept safe. You can well realize, Sir, that if the minorities in the Indian Union—Muslim minorities there—do not find opportunities for adequate political expression within the Indian Union and they choose to trek to Pakistan, then, Sir, Pakistan will, in the wave of their invasion, I am afraid, be washed into the sea. I think, Sir, that for the safety of Pakistan it is desirable that minorities should get both a fair deal here as

well as a fair deal elsewhere. And, therefore, Sir, it is quite feasible that persons not remaining within Pakistan or not becoming permanent residents of Pakistan can serve Pakistan far better than by coming within its boundaries and thereby divesting themselves of their capacity to serve the cause of the minorities. Sir, I feel that until the Pakistan Government has fulfilled its obligations towards the Muslims of the Indian Union, it should not undertake such a resolution. I feel, Sir, that this Resolution breathes suspicion as regards the *bona fides* of those who are not permanent residents of Pakistan but who, perhaps, in their days did render service—sufficient service—in the creation of Pakistan.

Sir, I think, if I repeat it again, that a resolution like this will be sorely misunderstood by the Muslims of the Indian Union. Up till now, unfortunately, the Muslims of the Indian Union are still being held responsible for the acts of omission and commission of the Pakistan Government in respect of its own minorities. That should not be so, but until and as long as that continues—and I maintain, Sir, that will continue until such time as the two Governments meet together for the purpose of drafting the Charter of Minorities, until that time, Sir, I think it would be extremely unwise on the part of the Pakistan Government to eliminate the Muslims who may happen to live within the Indian Union, but who are best serving the cause of Pakistan and of the Indian Union by their being there.

Sir, I pass from this to the next point, namely, that a person must owe allegiance to Pakistan and to no other State. I sympathize greatly with the Pakistan Government, with its vision of enemies within and enemies without, with its vision that this State is riddled with fifth columnists, it has to be extremely careful and, therefore, it can only have within its Constituent Assembly persons who owe allegiance to that State and that State alone and, after all, Sir, a Member of the Constituent Assembly is of very, very great importance. He is the person who has to mould the destinies of Pakistan. He is supposed to have an individual voice, although he may not stand on the Floor of the House and criticise this Government or place before it any constructive remarks. He is far more important than a British Governor who may owe allegiance to Pakistan and, at the same time, owes allegiance to his own native land and to the Government beyond the seas. He is of far greater importance than your Commanders-in-Chief of land, air and sea who take the oath of allegiance to Pakistan, but who still owe allegiance to another State outside. I realise, Sir, the importance of the Honourable Members of the Constituent Assembly and how very, very important it is that they shall owe allegiance only to one State. On this point I have no issue with the mover. I only wish to point out, Sir, that times can change and do change. I am reminded, Sir, of two cases—one a little while ago when was it not my very dear friend, Choudhury Khaliq-uz-Zaman, who took the oath of allegiance in the Indian Union and who today is the President of the Pakistan Muslim League, the body which stands behind the Government? Is there not a very recent case, perhaps I am mistaken, is not an Honourable gentleman by the name of Mr. Ishaque Sait, who took the oath of allegiance only the other day in the Indian Union Parliament, today the representative of the Pakistan Government as an Ambassador outside. It would be difficult to define if allegiance to one State debars him from owing allegiance to the Pakistan Government: and if the subsequent allegiance is exclusive or not.

Well, Sir, as I said, I join no issue on this point with the Honourable Ministers. If their conscience is satisfied, if they think that whereas in the case which I have pointed out, it is permissible for persons to have this divided allegiance—but a Member of the Constituent Assembly may not have it—they are at liberty to frame any rules they like on the matter, subject of course to the point which I have raised first and to which I shall advert—not, Sir, as a challenge to your ruling, which is final, but as an appeal to the Honourable

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Members of this House to consider that legal point and not to force the motion through the House.

Sir, I am frightened at the possibilities that have been rendered possible by an amendment of this kind when it is open by changing the rules of this House to eliminate Members of this House, to alter the constitution itself of the Constituent Assembly by rules, and not wait for the Constitution Act to be passed. Sir, the rules may be passed here, but I would like to draw the attention of the House to the fact that it would be most unwise to pass such rules as conflict with the law of the land. Sir, I am reminded of the case which I think the Honourable the Prime Minister must be fully aware of. The House of Commons was carried away by that same complex as has been exhibited by the Honourable Pirzada Abdus Sattar that the Constituent Assembly is such a Sovereign Body that it can do anything that it likes. It cannot, Sir. It cannot go beyond the Law which binds it. The House of Commons by a resolution—a motion duly and properly moved—allowed Hansard to print its proceedings. Hansard duly printed the proceedings, which were affected by the law of libel. The person who was libelled sued Hansard in the King's Bench; the judges laid down that the Houses of Parliament could not frame a resolution or a motion which conflicted with the law of the land and they accordingly awarded damages to the person who had sued Hansard; thereafter the plaintiff tried to execute that decree; the House of Commons in its turn brought up the Sheriff for contempt. The King's Bench then laid it down that although the Houses of Parliament had no right to amend the law in the manner in which they had done, the King's Bench could not interfere in this particular matter of the arrest of the Sheriff, as it was presuming to act as a matter of privilege. That was a sufficient hint to the House of Commons which thereupon proceeded in accordance with the law to enact an Act which gave Hansard the permission to print the proceedings.

I would request the Honourable Ministers also to act in that manner. The matter has not gone before any King's Bench or any other bench, but I would ask to consider this and take the lesson to heart, and ponder if they wish to proceed illegally. Let them proceed not by a change in a resolution which offends against law, but by an enactment which is within their powers, which can alter the law.

Sir, I would, therefore, request them as an act of propriety to defer consideration, ponder over it, and if any constitutional points arise let them consult proper constitutional lawyers in England and thereafter act in accordance with law and constitutional propriety.

Now, Sir, the next point is the attempt on the part of this House to take away the rights of membership from those who have been duly and properly elected. I maintain that an attempt to do so will lay Pakistan open to suspicion regarding its *bona fides*. I can understand, Sir, regarding future eligibility, but to take away the rights from those who have been duly elected under the Act, to take away those rights by rules, I fear, Sir, would be a highly improper act. Although the Pakistan Government may succeed and will succeed on account of its party discipline, in passing this resolution, I maintain standing on the Floor of this House, that it will stand condemned before the bar of public opinion.

Mr. Chairman : I may point out that the Government does not function in this House at all. We are members of the Constituent Assembly.

Mr. H. S. Suhrawardy : But, Sir, we cannot help referring to the Honourable Mr. Liaquat Ali Khan as the Prime Minister and to Pirzada Mr. Abdus Sattar as an Honourable Minister. Sir, something frightful is about to be created here, *viz.*, to make the President, the informer, the Prosecutor and the Judge. Never, Sir, in the whole course of the history of franchise has the President of an Assembly been charged with

such powers to the exclusion of the law courts. Sir, I again do humbly request the Honourable Members of this House to pause and consider before they invest their President with such dictatorial powers, because there is no doubt that you are investing him with autocratic powers beyond the law, which I do not think it will be wise for this House to do. It will betray a tendency upon the part of the majority of the Members of this House which is to consider the Constitution of Pakistan, to establish a dictatorship beyond the law. Sir, I plead for law when I ask you to amend the resolution. Let not the President be invested with final powers to deprive a person of his rights of franchise. To preserve the coveted right of franchise, Sir, revolutions have occurred in England. Let not the President take away that coveted right from a single Member in this House, and place himself beyond the law, by a resolution passed in the Constituent Assembly.

Mian Mohammad Iftikharuddin (West Punjab : Muslim) : Mr. Chairman, I feel that two members in this House, the able speaker who has just sat down, and Mr. Pirzada have exhibited a mental confusion which would do injustice to the intelligence of this House, unless both of them clarify their position in regard to the points they have raised. I think they have mixed up citizenship with residence. Citizenship and residence are not the same. Who would not admit that a citizen of Pakistan who serves for twenty years in India protecting the rights of minorities without taking any of the advantages of Indian citizenship. A man who may have undergone hardships in Indian jails for his cause, will have served Pakistan more than most of us who live here ! Who would not admire him more for this than one would, had he resided all the time in Pakistan ? Would you not envy a person who for the cause of justice goes down to Kashmir and faces dangers there for months, may be for years ? Such a man is fit to be called a citizen of Pakistan more than most of us. Would you not admire the man who goes to Palestine and sees that justice is done to the Arabs, serves for 10 years, be in the army to see that just rights of the Arabs are protected ? When such a man comes back, would you not be proud to call him a citizen of Pakistan ? In all these three categories, the majority of Members in this House will agree with me that such a person deserves the admiration of all of us and deserves to be called a citizen of Pakistan. To confuse, therefore, residence with citizenship is an insult to the intelligence of this House. I can well believe the Members of this House demanding a person to declare himself a citizen of Pakistan but to insist upon his residing in Pakistan (if he can employ himself usefully elsewhere for the common cause) is a great mistake. You may also say that after his declaration of his intention to be a citizen of Pakistan, he should not enjoy the privilege of citizenship elsewhere. But to insist on residence is doing injustice. This confusion has been created by the speeches of the two gentlemen.

The Honourable Sardar Abdur Rab Khan Nishtar : Did I make any speech ?

Mian Mohammad Iftikharuddin : If not speech, your motion at least confuses residence with citizenship. A person may not live for 20 years and yet he may declare himself to be a member of Pakistan and deserve more than most of us to be a citizen of Pakistan. Secondly, the able speaker who has just sat down mixed up the question of defence and rights of minorities with the citizenship rights in Pakistan. I repeat that it can be a great thing for a person to declare himself to be a citizen of Pakistan and yet to say that he shall not enjoy any of the privileges of its citizenship, shall continue to be in India and suffer hardships in order to see that justice is done to minorities there. Mr. Suhrawardy, therefore, when he confused the defence of the rights of minorities with citizenship, was side-tracking the issue. One can declare himself a citizen of Pakistan and yet not live here. I am sure even the Housing

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Minister will appreciate the action of a person who decides to be a citizen of Pakistan and yet remains absent from here.

Sir, it is an important issue on which we are taking a decision today. We have been elected by constituencies which no longer exist, but all the same we are members of this House because the constituencies had the right to elect us. I have just taken the oath of allegiance and that of fidelity to the Constitution of Pakistan. What is the harm if we also add another sentence to that oath in which one declares oneself to be a citizen of Pakistan only. After declaring oneself to be a citizen of Pakistan one may go and live any where. There should be no authority on earth to question that. Here, according to the motion, the President can just say that you are no longer faithful to Pakistan and that you do not owe allegiance to Pakistan. Sir, it is astounding. This power being given to the President in the case of members who are supposed to be seventy top people in a population of 6 crores, whose importance according to the Constitution is of the first seventy. These members are not given any right to go to a court of law whereas a *Chaprasi* downstairs can go to a court of law and say that I am prepared to prove that I am faithful to the State of Pakistan. If the President one morning takes it into his head to say that you are not faithful to Pakistan, you cannot do anything, Sir. This is doing injustice to our constituencies and to our democratic traditions. If the acts or utterances of a person are *proved* to be treasonable he should not only be turned out from the Assembly, but may even be hanged and one would approve of that action. But the question is as to whether the question of disloyalty to the State of Pakistan is to be decided by a proper court of justice or by an individual without proper trial. A *Chaprasi* downstairs can go to a Court of Law and prove that he has not been disloyal to the State but not a member of this House. Most of us would attach great importance to being citizens of Pakistan. Some of us would rather not 20 years in jail here rather than be turned out.

Of course, justice will be done by the President, but in spite of the great confidence that that President enjoys, it is very clear that we do not for example, give the President power to hang anybody even though he may have seen it with his own eyes a murder being committed by person. The President has no such power. It is the business of a Court of Law where the President may also be asked to give an evidence. It is no reflection upon the integrity or upon the judgment of the President when we say that you should come before a Court of Law. Likewise, I am sure that it would be better for all concerned (the President, the Government, and each one of us) if proper trial is held in the case of the alleged disloyalty of a Member of this House. I had risen as a member of the Muslim League Party to ask for this clarification because I thought both speakers who had preceded me had created a confusion which did injustice to the intelligence of this House.

Dr. Mahmud Husain : Mr. Chairman, Sir, to my mind the issue is very simple. The issue is whether only such people as have been residents of Pakistan or lately become residents and who owe allegiance exclusively to this State, are entitled to become or remain, as the case may be, Members of this House. In fact, I am surprised that there are more than one opinion on the subject. I thought it was so obvious that only the people who are here either by choice or because they happened to be here when India was partitioned and the State of Pakistan came into existence, should have rights of citizenship and have the right to become Members of this House. It has been said that conditions are still fluid and the people are coming and going and that this is not the time for making this law. It has also been suggested that there may be people who may be citizens of Pakistan and yet may be residing for a long period in India. There is no reason why they should be deprived of their rights.

Another point that has been mentioned is in connection with the introducing of a new disability after the Members have been elected. It has been said, the House has no right to challenge their title. Sir, I humbly submit that these arguments have really no force. In this State of Pakistan only such people who happened to be in Pakistan, when Pakistan was born or who have, afterwards, become Pakistanis, *i.e.*, who have come over here with the intention of throwing in their lot with this State and who owe allegiance to this State, have rights of citizenship and no one else has. There is no point, Sir, in a man having one foot in one camp and the other foot in another camp. Such a person cannot do any useful service either to Pakistan or to India. India is still a big country. It has still as many Muslims as Pakistan has and there is lot of work that a good man can do in India. Only people should make up their minds and let them decide whether they want to serve India or Pakistan. And once they have made a decision, let them stick to it. There is no point in being in more than one place and thereby being nowhere.

Sir, it has been suggested that at present it is only obvious that there will be people who will be in both places, or will have both citizenships and such people should be allowed to stay in this House. Why? No satisfactory argument has been put forward. Then, it is possible that even after elections are held in a free country and a man is duly elected to its legislature or its parliament, afterwards loses his membership although he has done no harm to the State. I shall give an example, Sir. Examples of double nationality do exist; in fact, examples of multiple nationality do exist. But these people have not got the rights which are being claimed here for such nationals. A woman who might have been elected, say, to the French Legislature, chooses to marry a German husband. Sir, she would lose her French nationality immediately and thereby she would lose her membership in the Legislature; not because she has committed any act of treason, not because she has done anything whatsoever against the State and yet she loses her nationality. Here in Pakistan, unfortunately, we have not got any regular laws of nationality or citizenship, as I would choose to call it, and it is because of the absence of full-fledged rules of citizenship that it is necessary that we ought to have this transitory provision.

Already nine months have elapsed since Pakistan was formed. Even in the case, cession, where territories have been ceded to another State, or where new States are carved out of the old States, citizens are usually given a choice to say whether they want to remain the subjects of the old State or whether they want to become subjects of the new State. But here nine months have elapsed and if a person has as yet not been able to make up his mind as to whether he wants to become a citizen of India or Pakistan, then it is not the fault of this House to suggest that he does not fulfil the conditions which surely were in the minds of those who elected him, *viz.*, that he would serve Pakistan and no other State and that he would be a citizen of Pakistan. If now they find that such conditions are not fulfilled by certain Members, however eminent they may be, and whatever their services, I submit that there is really no place for them in this House. But the amendment which has been moved by the Honourable Pirzada does not really exclude anybody who wants to become a Member of this House from becoming a Member because all that is required is that either he must be a permanent resident or he must now become a permanent resident. Even now it is possible for a person to become a Member of this State. And if a gentleman has not been a subject of this State and does not propose to become a subject of this State and does not exclusively owe allegiance to this State and still owes allegiance to some other State, then, Sir, what right has he to be in this House which is the Constituent Assembly of Pakistan and not of any other State. It was pointed out by the Honourable Mian Iftikharuddin that a man who is a citizen of Pakistan might choose to remain for 20 years in

[Dr. Mahmud Husain.]

India and serve the Muslims there and thereby even serve the cause of Pakistan better, cannot be termed a permanent resident of Pakistan. Sir, I daresay that this difficulty does not arise by accepting the amendment. This amendment does not say that a man who might be away for 20 years in India cannot be considered a permanent resident of Pakistan. There is nothing here to suggest that a man who has merely been physically away for 20 years is not a permanent resident of Pakistan. Nothing has been suggested in this amendment to that effect and, therefore, Sir, if the Honourable Speaker or anybody has the ambition to serve India in this way and in this manner, then he has every right to do it without being dislodged from this House although I would suggest that there would be some little difficulty in the sense that a man who is away for 20 years and does not attend a single meeting of this House, would not be of much real use to this House. However, if it satisfies his vanity and if it satisfies his ambition to remain a Member of this House, there is nothing in this amendment which prevents him from doing so. These are, Sir, the only observations that I have to make on this question and I commend the amendment moved by Pirzada Sahib to the House for acceptance.

Mr. Chairman : The House stands adjourned till Ten Minutes Past Eight for Prayers.

The Assembly then adjourned till Ten Minutes Past Eight for *Maghrib* Prayers.

The Constituent Assembly re-assembled at Ten Minutes Past Eight of the Clock after *Maghrib* Prayers.

The Honourable Mr. Liaquat Ali Khan : Mr. Chairman, Sir, I would like to refer briefly to the speech that was made by my Honourable friend, Mian Iftikharuddin. If Mian Sahib had been here.....

Mian Mohammad Iftikharuddin : I am here, Sir.

The Honourable Mr. Liaquat Ali Khan : If Mian Sahib had been here when my Honourable friend, Sardar Abdur Rab Nishtar, moved his motion I am sure he would not have found himself so confused, although, Sir, those of us who have had the privilege of listening to Mian Sahib have found that confusion is not an unusual thing with him.

Mian Mohammad Iftikharuddin : The feeling is reciprocal !

The Honourable Mr. Liaquat Ali Khan : Sir, my Honourable friend waxed eloquence on the proposition that he would admire a man who went to India and spent 20 years of his life in jail by serving the Musalmans there. I do not know how he would be serving the Musalmans by remaining in jail for 20 years but anyhow, Sir, Mian Sahib has been a jail-bird and I suppose he was speaking from his personal experience.

Mian Mohammad Iftikharuddin : You can serve people by being in jail. Sure.

The Honourable Mr. Liaquat Ali Khan : Sir, if my Honourable friend had taken the trouble of referring to the rule which is intended to be amended he would have found that in the rules as passed by the Assembly it is stated that no one would be eligible for membership of the Assembly unless he is a national of Pakistan or has acquired the Pakistan domicile. So far, we have not defined as to who is a national of Pakistan and what are the conditions for a person to acquire Pakistan domicile. It was considered that some rough and ready method should be prescribed by which a person's eligibility should be adjudged. Because of the fact that the things have not settled down yet and there is movement of population between India and Pakistan, it was considered that the best proposition would be to lay down that anybody who

has been, or has become a permanent resident of Pakistan and, secondly, that who owes allegiance to Pakistan, shall be eligible for becoming a Member of the Constituent Assembly, or for remaining as such. My Honourable friend, I am sure, would recognise that instead of restricting the rights of the people of Pakistan, the proposition which is before the House gives greater liberty to the people with regard to their citizenship than what is prescribed in any other country of the world. Sir, my Honourable friend said: "To whom am I going to be answerable whether I owe allegiance to Pakistan or not when I have taken the oath and have stated that I owe allegiance to Pakistan?" That is true. If he had taken the trouble of reading the amendment he would have found out that it does not say "who owes allegiance to Pakistan or has acquired Pakistan domicile" but "who owes allegiance to Pakistan and to no other State". Surely, Mian Sahib would not countenance a proposition like this then; that a man should owe allegiance to two States and yet claim to sit in the Constituent Assembly of Pakistan and frame a constitution for the people of Pakistan.

Mian Mohammad Iftikharuddin : Of course, not.

The Honourable Mr. Liaquat Ali Khan : I am glad my friend recognises that that is really a proposition which is a just proposition and to which no one can take any objection.

Then, Sir, another objection was raised by Mian Sahib. He said that a *Chapraisi* has got the right to go to a court of law and you are depriving the top seventy Members—actually there are 69 members in the Pakistan Constituent Assembly—from going to a court of law. Now, Sir, these top 69 Members have elected their own President. Would these top 69 Members have greater confidence in a Sub-Judge, who is under the influence of a Government which is not responsible to this Constituent Assembly, or would they have greater confidence in their own President whom they themselves have elected as their President? Sir, I really cannot understand the objection that has been raised. Mian Sahib said: "talk about democracy and democratic methods". To my mind it is more democratic to elect a man by your own vote and invest him with power than to appoint a man—a man to be appointed by a Government, a man who is under the influence of that Government—and then leave everything to him to judge. I do not see, Mr. Chairman, that there is any sign of dictatorship in this proposition if it is proposed that the President of this Constituent Assembly should have this power. And apart from that, Mr. Chairman, I think it is more dignified for the Members of this Constituent Assembly that the enquiry should be made by their own President into their conduct with regard to these matters than that a Sub-Judge or a Judge—an outsider—should make the enquiry.

Sir, now with your permission I would like to say a few words about the speech of the Honourable Mr. Shaheed Subrawardy. He said: "times can change and do change." I say Amen to that and I am looking forward to the day when in Pakistan all those who are interested in the well-being of Pakistan will give up the habit of running with the hare and hunting with the hounds. That day we are all looking forward to and that day I have no doubt is coming nearer every day.

My Honourable friend said that by this amendment of my Honourable friend, Mr. Pirzada, we were eliminating the Muslims of India from getting any privileges from Pakistan and yet, Sir, in the same breath he contradicted himself by quoting the instance of Haji Abdus Sattar Seth, who is a Muslim from India and whom the Pakistan Government have appointed as its Ambassador in Egypt. Does it show that the Pakistan Government is eliminating Muslims from India, or does it not show that the Pakistan Government has got as much confidence in the Muslims who are in India, as they have in the Muslims who are in Pakistan? But what the Pakistan Government

[The Hon'ble Mr. Liaquat Ali Khan.]

cannot—and I am sure the Pakistan people cannot—countenance is that a man should be owing allegiance to two States and should come and guide the destiny and frame the future Constitution of and for the people of Pakistan.

Sir, my Honourable friend, as is usual with him, talked about a lot of irrelevant matters. He talked about the rights of minorities in India. He talked about the sins of commission and omission of the Pakistan Government and in a very subdued manner of the Government of India. That issue, Mr. Chairman, is not before the House. That issue to my mind is a very simple one. Do you want that those who are to be Members of your Constituent Assembly, that those who are to be the Members of this Sovereign Parliament of Pakistan, should be citizens of Pakistan? Should the membership be open to all and sundry irrespective of the fact whether they are citizens of Pakistan, whether they owe allegiance to Pakistan or whether they do not owe allegiance to Pakistan? Because let me tell you, Mr. Chairman, a man can be loyal only to one country; a man can owe allegiance only to one State and anyone who tries to pose that he owes allegiance to more than one State is either deceiving himself or thinks that he can deceive others. And, therefore, Sir, to my mind, this is a very important condition that anyone who is to be a Member of this Constituent Assembly must owe allegiance to Pakistan and Pakistan alone.

Sir, there seems to be a great deal of confusion with regard to the Cabinet Mission Plan. It has been quoted and I am afraid that those who have tried to base their case on it in opposing this motion, have forgotten as to what were the circumstances under which the Cabinet Mission Plan was put forward and what were the reasons for that Plan. Honourable Members would recollect that at the time when the Cabinet Mission Plan, which they regard as their Bible in opposing this motion, was put forward there was no question of division of India under the Cabinet Mission Plan. India was not to be partitioned, was not to be divided and therefore the Cabinet Mission did not consider it necessary that there should be any restriction placed on the eligibility of persons from one Province becoming members in another Province because all the people of India, under that Plan, were to be citizens of India, and there was no question of being citizens of any other State. And, therefore, Sir, when the new Plan came out, the Cabinet Plan, except to the extent that it had laid down the number of seats that were to be allotted to the various Provinces, and the number of seats in the Constituent Assembly that were to be allotted to the various communities has no validity as far as the Constituent Assembly is concerned. Now, Sir, tomorrow some Honourable Members may come forward and say that according to that Plan no age limit is prescribed and therefore no age limit for the Members of the Constituent Assembly should be fixed.

Sir, what I am saying is this that to put forward this argument that this Constituent Assembly cannot lay down any rules with regard to eligibility of the Members, or those who are to become Members, or as to those who can remain as Members, I think, Sir, my Honourable friends have not really relied on very strong document in support of their contention.

My Honourable friend, Mr. Suhrawardy, said that there might be some Muslims who may be coming later to Pakistan. The door is open for them. Whether they are Muslims or Hindus, the door is not closed; the door is open for them because what it says is this: "who has been or has become" and does not say "who has become a permanent resident of Pakistan before such and such date". If the matter is to be considered tomorrow then anybody who has come today and has become a permanent resident is entitled to have all the privileges that those who have been living here for

generations are entitled to have. Therefore, I submit, Mr. Chairman, that really speaking the condition that has been laid down is more liberal than any condition that anyone could conceive of.

Then, Sir, my Honourable friend, Mr. Suhrawardy, says the Muslims of the Indian Union have no rights in Pakistan. Of course they have no rights in Pakistan until they become citizens of Pakistan. Let me tell my Honourable friend that if Pakistan followed any other policy than the policy which it is following, that is, if Pakistan were to regard every Muslim in India as citizen of Pakistan, Mr. Suhrawardy will be placing the Muslims in India in a most dangerous position.

Mr. H. S. Suhrawardy : I agree.

The Honourable Mr. Liaquat Ali Khan : Then what did my Honourable friend mean by saying that the Muslims of Indian Union have no rights in Pakistan. What rights does he want ?

Mr. H. S. Suhrawardy : Charter of minority rights.

The Honourable Mr. Liaquat Ali Khan : My Honourable friend says " Charter of minorities rights ". I wish he would get the Indian Government to agree to have a charter of minority rights. I do not want to waste the time of the House in dealing with this matter because on the last occasion I dealt with it at great length.

Then, Sir, he says that the best way of serving the Muslims of India was for a Muslim to be citizen of both the Dominions. Now let me tell you, Mr. Chairman, that, to my mind, this is the worst way, because you are looked on with suspicion by both the Dominions. The best way of serving—whether Muslims or Hindus of either this Dominion or that Dominion—is for a man to make up his mind whether he is going to be a citizen of this State or a citizen of India. But my Honourable friend seems to think that the only way in which you can serve Muslims of India is to become a Member of the Pakistan Parliament ; during the session come once for half an hour, deliver a tirade here and then go back. Well, if that is the conception of Mr. Suhrawardy as to the manner in which the Muslims of India can be served, I beg to differ with him and I do not know whether the Muslims of India would regard that as a great service to their cause as a great service to the cause of their safety.

Sir, my Honourable friend said : " You claim to be the biggest State and your ambition is to become leader of the Muslim world, but you have no sense of justice or toleration ". My Honourable friend is having a very mistaken notion of his importance, if he thinks that this amendment has been brought forward only for the purpose of eliminating Mr. Suhrawardy from the Constituent Assembly of Pakistan. Mr. Suhrawardy, if he so desires, can become a permanent resident of Pakistan tomorrow. Mr. Suhrawardy, if he so desires, can owe allegiance exclusively to Pakistan from now onwards. For that he need not wait till tomorrow and enjoy all the privileges and all the advantages that Pakistan offers, but then if he becomes a permanent citizen and if he owes allegiance exclusively to Pakistan, he has to take the obligations also. He cannot eat the cake and have it. He cannot enjoy all the privileges, all the advantages and all the rights in Pakistan and remain a citizen of India and thus avoid all the obligations. So, therefore, let me disabuse his mind of this obsession from which he is suffering that all this time of the Assembly is being taken up for the sole purpose of eliminating Mr. Suhrawardy, when he could thwart any such attempt by becoming a citizen of Pakistan tomorrow by mere declaration that he is a permanent resident of, and he owes allegiance to Pakistan and to no other State. We are not so foolish as to take the trouble of wasting the time of this House by bringing forward a motion of this kind to oust him as he seems to think. As I have suggested, it is not the intention and I hope that it will never be the intention of the Members of this House to take any action to victimize any individual or

[The Hon'ble Mr. Liaquat Ali Khan.]

individuals. I appeal to the Members of this House that whenever they take a decision they should take decisions on principles and matters of policy irrespective of the consequences which may befall any one individual Member.

Sir, I do not think I have anything to say, except that I must refer to Mr. Datta's speech. He said that he had taken the oath of allegiance to Pakistan. Now, it is an insult for him to be told that he was not loyal to Pakistan. That is not the intention. If my Honourable friend has taken the oath of allegiance to Pakistan, the amendment does not say that his conduct will be enquired into whether he has or whether he has not, when he has actually done so, but surely the enquiry can only be made if he takes another oath of allegiance in any other country or makes a declaration that he does not owe allegiance exclusively to Pakistan, but he owes allegiance to more than one State.

Mr. Dharendra Nath Datta : No, that does not cover.

The Honourable Mr. Liaquat Ali Khan : What it means is this that exclusively he owes allegiance to Pakistan and to no other State.

Mr. Dharendra Nath Datta : If he has reasons to believe

The Honourable Mr. Liaquat Ali Khan : That is quite right, because it does not say if he has reasons to believe that he does not owe allegiance to Pakistan. It says that he has reasons to believe that he does not owe allegiance to Pakistan exclusively. If my friend says that the President may receive information and so on, well, then, in that case somebody has got to receive the information and somebody has got to enquire. There is no intention to humiliate anybody who owes allegiance to Pakistan. The President, who is your elected President, shall never take any action to harass or insult the Members who themselves have elected him. What I am saying is that the amendment does not lend itself to the interpretation which my Honourable friend, like a very clever lawyer that he is, has tried to put on it.

Now, Sir, as I have stated, the amendment is a very simple one and let me tell my Honourable friends here that I have here the Draft Constitution of India. They have made it more difficult for people to be citizens of India than what we have done in this amendment. First of all, a man has to be born in India or his father or grand-father and so on, and so forth, and then he has to be a permanent resident of India and then on top of that, he owes allegiance to India and to no other State that he can claim that right. Secondly, about domicile, they say that it should be as described in the Indian Succession Act of 1925. If that were enforced, according to that a man has to live in a territory for one year before he can acquire the domicile of that country. So, therefore, Sir, instead of appreciating the efforts of my Honourable friends and commending them for this amendment which they have brought forward whereby they have made it easier for people to become citizens of Pakistan than is provided in any other country, they have been subjected to a great deal of criticism which I think was ill-informed, and for which I do not think there is any justification. Sir, I hope that the Honourable Members of this House will support this amendment and I again want to say and want to make it clear that the intention of this amendment is not to victimize anybody. The intention of this amendment is to provide a rough and ready method by which, till such time as we are able to frame our own Constitution, so far as membership of the Constituent Assembly is concerned, we are able to define as to what a citizen of Pakistan means.

Pakistan welcomes everyone who wants to come and make Pakistan his home, but at the same time it lays down the condition that he must owe allegiance to Pakistan, and Pakistan alone. I hope, Sir, after this explanation, the fears that some of my friends may have had, will be removed.

Malik Mohammad Firoz Khan Noon (West Punjab : Muslim) : Sir I move that the question be now put.

Mr. Chairman : Motion has been moved that the debate be closed. There has been sufficient debate. The question is that the question be put. Of course, I presume the Honourable Mr. Nishtar does not want to exercise his right of reply.

The Honourable Sardar Abdur Rab Khan Nishtar : After the elaborate speech of Mr. Liaquat Ali Khan I do not think there is any need for me to reply.

Mr. Chairman : Then I now put the various amendments.

First of all I propose to put to vote the amendment to the amendment of the Honourable Mr. Abdus Sattar Pirzada, the amendment of Mr. Jnanendra Chandra Majumdar.

The question is :

“ That in clause (a) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of Rule 6 of the Constituent Assembly Rules, the following be deleted :—

‘ In case of dispute with regard to the question of eligibility the decision of the President shall be final ’.”

The motion was negatived.

Mr. Chairman : The next amendment is again of Mr. Jnanendra Chandra Majumdar,

The question is :

“ That clause (b), (c) and (d) of the proposed amendment by the Honourable Mr. Abdus Sattar Pirzada to the motion by the Honourable Sardar Abdur Rab Khan Nishtar to amend sub-rule (5) of rule 6 of the Constituent Assembly Rules, be deleted. ”

The motion was negatived.

Mr. Chairman : The next amendment of Mr. Dharendra Nath Datta is a lengthy one and it may be taken as read. I now put the question.

The amendment was negatived.

Mr. Chairman : I now put the main amendment of Mr. Abdus Sattar Pirzada.

“ That for the motion moved by the Honourable Sardar Abdur Rab Khan Nishtar for amendment of sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted :—

‘ That for sub-rule (5) of rule 6 of the Constituent Assembly Rules, the following be substituted :—

(5) (a) No person shall be eligible for election to the Constituent Assembly of Pakistan unless he has been or has become a permanent resident of Pakistan and owes allegiance to Pakistan and to no other State. In case of dispute with regard to the question of eligibility the decision of the President shall be final.

(b) Any member of the Constituent Assembly in respect of whom the President has reason to believe that he has neither been nor become a permanent resident of Pakistan or that he does not owe allegiance to Pakistan exclusively as provided in clause (a) of this sub-rule, may be called upon by the President to show cause, within a period specified by the President, as to why his seat should not be declared vacant.

(c) If such a member fails to satisfy the President within the specified period, that he has not incurred any of the disqualifications mentioned in clause (b) of this sub-rule, the President shall order that he ceases to be a member of the Constituent Assembly and declare his seat vacant.

(d) The decision of the President under this sub-rule shall be final and shall not be questioned in any Court of Law or before any other authority. ”

Some Honourable Members of Opposition : Sir, the Noes have it, the Noes have it.

Mr. Chairman : Then Division.

(At this stage the Division bell rang.)

Mr. Chairman : The question is the amendment of Mr. Abdus Sattar Pirzada.....

Some Honourable Members of Opposition : Sir, the Noes have it, the Noes have it.

Mr. Chairman : Now to division. The Ayes to the right and Noes to the left.

The Assembly divided.

AYES—23

Abdul Hamid, The Honourable Mr.—
 Abdulla-al Mahmood, Mr.—
 Abdulla-el Baqui, Maulana Mohammad—
 Abdus Sattar Abdur Rahman, The Honourable Pirzada—
 Abul Masud Abdul Hamid, Mr.—
 Abul Kasem Khan, Mr.—
 Asadullah Jan Khan, Sardar—
 Begum Shaista Suhrawardy Ikramullah.
 Chaudhary, Mr. Abdul Matin—
 Chaudhary, Mr. Murtaza Raza—
 Fazlur Rahman, The Honourable Mr.—

Ghazanfar Ali Khan, The Honourable Mr.—
 —Gazder, Alhajj Muhammed Hashim—
 Iftikharuddin, Mian Mohammad—
 Liaquat Ali Khan, The Honourable Mr.—
 Mahmud Husain, Dr.—
 Nazir Ahmad Khan, Mr.—
 Nishtar, The Honourable Sardar Abdur Rab Khan—
 Noon, Malik Mohammad Firoz Khan—
 Nur Ahmed, Mr.—
 Sardar Bahadur Khan, Khan
 Serajul Islam, Mr.—
 Shahabuddin, The Honourable Khwaja—

NOES—9

Barma, Mr. Prem Hari—
 Chakraverty, Prof. Raj Kumar—
 Chattopadhyaya, Mr. Sris Chandra—
 Das, Mr. Akshay Kumar—
 Datta, Mr. Dharendra Nath—

Datta, Mr. Bhupendra Kumar—
 Majumdar, Mr. Jnanendra Chandra—
 Roy, Sri Dhananjoy—
 Sur, Mr. Harendra Kumar—

The motion was adopted.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE ON ADDITION AND/OR RE-DISTRIBUTION OF SEATS IN THE CONSTITUENT ASSEMBLY OF PAKISTAN

The Honourable Mr. Ghazanfar Ali Khan (West Punjab : Muslim) : May I have the permission to present this report of the Committee to examine the question of additional and re-distribution of seats ?

Mr. Chairman : I think that is a formal matter and there is no objection to it.

The Honourable Mr. Ghazanfar Ali Khan : Sir, I beg to present the report of the Committee appointed to examine the question of addition and/or re-distribution of seats in the Constituent Assembly.

Mr. Chairman : The House stands adjourned till 10 A.M., on 22nd May, 1948.

The Assembly then adjourned till Ten of the Clock, on Saturday, the 22nd May, 1948.